

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

RICK TYRONE ROBINSON,

Plaintiff,

v.

LON BECHER,

Defendant.

OPINION and ORDER

18-cv-107-jdp

Pro se plaintiff and prisoner Rick Tyrone Robinson is proceeding on a claim that defendant Lon Becher, a member of the staff in the health services unit at Columbia Correctional Institution, violated Robinson's Eighth Amendment right to medical care by depriving him of his asthma medication for several days. Robinson moves for summary judgment, Dkt. 40 and Dkt. 44, both as to the merits and as to Becher's affirmative defense that Robinson failed to exhaust his administrative remedies, as required by 42 U.S.C. § 1997e(a).

I will grant the motion as to the question of exhaustion. Becher has the burden to show that Robinson failed to exhaust. *Jones v. Bock*, 549 U.S. 199 (2007). Because Becher did not file a motion for summary judgment on that issue by the deadline for doing so, Becher has forfeited that defense.

I will deny Robinson's motion as to the merits. To prevail on his claim at summary judgment, Robinson would have to prove as a matter of law that Becher consciously refused to provide reasonable treatment for a serious medical need. *Forbes v. Edgar*, 112 F.3d 262, 266 (7th Cir. 1997). But the only evidence Robinson cites in support of his claim are two health service requests. Dkt. 40-1 and Dkt. 44-1. His writing on the requests is illegible, so it is not

clear what he is asking for. Regardless, neither request appears to have been signed by Becher, both requests are dated after the relevant events in this case, and neither response shows a disregard for Robinson's health. In one response, staff expressed confusion about the meaning of Robinson's request; in the other, staff simply wrote "albuterol," suggesting that Robinson was asking for the name of his asthma medication. Because neither document shows that Becher disregarded Robinson's health, I am denying Robinson's motion for summary judgment as to the merits of his claim.

ORDER

IT IS ORDERED that plaintiff Rick Tyrone Robinson's motion for summary judgment, Dkt. 40, is GRANTED as to the question whether Robinson exhausted his administrative remedies. The motion is DENIED in all other respects.

Entered January 11, 2019.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge